

**REMARKS**

The Office Action mailed February 5, 2010 has been received and reviewed. By the present Response and Amendment, Claims 1, 2, 11, 20 and 22 are amended. No new matter is introduced.

**35 U.S.C. § 101**

Claim 22 stands rejected under 35 U.S.C. § 101 because the claimed method of reducing the sensation of pain by a subject does not require a machine, does not impose a meaningful limit on the claims scope outside of a field of use limitation, does not involve more than insignificant extra-solution activity and does not particularly transform a particular article.

Applicant's Claim 22 calls for "contacting a skin surface at or adjacent a sampling site with an irregular lobed contact surface." One of ordinary skill in the art would recognize that a "contact surface" is something tangible that contacts another tangible subject. see *In re Nuijten*, 500 F.3d 1346, 1353 (Fed. Cir. 2007). Specifically, this "irregular lobed contact surface" is a specialized apparatus that is used to physically contact the skin surface of the subject. Applicant, consequently, submits that Claim 22 fulfills a requirement to overcome the rejection under 35 U.S.C. §101, and is in condition for allowance. Therefore, Applicant respectfully requests that the §101 rejection of Claim 22 be reconsidered.

**35 U.S.C. § 102 (b)**

Claims 1-3, 7, 8, 10, 20, 22 and 25 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,951,493 to Douglas et al. Applicant has amended Claim 1 to specify that the periphery of the opening is "cross-shaped," and has amended Claims 11, 20 and 22 to recite that the "plurality of inwardly and outwardly directed lobes are projected inwardly or outwardly relative to a reference plane coincident with an overall forward surface of the lancing device housing."

The '493 reference does not disclose or suggest Applicant's claimed invention as presently amended. The '493 reference does not disclose any cross-shaped opening. The recesses 80 of the '493 reference are only directed inwardly from the contact face, not outwardly. As such, Applicant respectfully submits that the '493 reference does not anticipate the presently claimed invention.

Further, Applicant submits that Figure 7 of the '493 reference does not disclose a non-circular periphery/opening as recited in Claims 11 and 20. A periphery, in this context, is "the outward bounds of something as distinguished from its internal regions or center," (see *www.merriam-webster.com*). The end surfaces 65 and 67 disclosed in the '493 reference are of circular configuration when viewed along the axis A. (Col. 6, lines 37-39). And, while the '493 reference states that other configurations may be possible, the description clearly states that the surfaces 65A and 67A "will still depress a **ring** of body tissue." (Col. 7, lines 47-48). A ring in this context, is "a circular line, figure or object; an encircling arrangement," (see *www.merriam-webster.com*). One of ordinary skill in the art, therefore, would recognize that the '493 reference discloses only circular peripheries, as opposed to the claimed non-circular periphery/opening.

Claims 11-18 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,922,099 to Christine et al. The '099 reference, however, also does not disclose or suggest a "plurality of inwardly and outwardly directed lobes ... projected inwardly or outwardly relative to a reference plane coincident with an overall forward surface of the endcap" as recited in Claim 11. Thus, Claims 11-18 are now considered to be in condition for allowance.

35 U.S.C. § 103 (a)

Claims 4-6 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,951,493 to Douglas et al. in view of U.S. Patent No. 3,922,099 to Christine et al. Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable

over U.S. Patent No. 5,951,493 to Douglas et al. in view of U.S. Patent No. 6,558,402 to Chelak et al. Applicant respectfully traverses and requests reconsideration.

As detailed above, neither of the Douglas or Christine references discloses or suggests inwardly and outwardly directed lobes, as presently claimed. Thus, no combination of these references could disclose or suggest the presently claimed invention.

Moreover, it would not have been obvious for one of ordinary skill in the art to combine the disclosures of Douglas and Christine as proposed by the Examiner. The Christine reference is directed to a vaginal douche or cake decorator. One skilled in the art would have absolutely no reason to modify a lancing device for blood sampling in accordance with the structural features of a vaginal douche or cake decorator.

Also, Douglas discloses that its needle 42 extends in the direction of, and beyond the surfaces 65 and 67. Therefore, the surfaces 65, 67 and the irregular recesses 80 are used specifically in unison with the movement of the needle 42. And, Douglas intends for excess fluid to escape through the recesses 80 (Col. 7, lines 51-55). Applicant submits that one of ordinary skill in the art would not, subsequently, identify the design in Figure 6A of Christine to compliment Douglas.

For the reasons above, Christine specifically requires the puncturing element 24 to move through the annular sleeve 18, which is opposite the probe end shown as an example in Figure 6A. And, the puncturing element 24 is designed to move within the tight sealed annular sleeve 18 so that there is specifically no escaping fluid from a punctured bladder (Col. 2, lines 33). Consequently, one of ordinary skill in the art would recognize that the structures and intentions of the designs in Douglas and Christine are not obviously combine and, in fact, teach away from each other. And, even if Douglas and Christine were combined, one of ordinary skill in the art could not derive a "cross-shaped opening through which a lancet tip passes upon actuation of the landing

device” as recited in Claim 23. Therefore, Applicant requests that the §103(a) rejection of Claim 23, and dependent Claim 24, be reconsidered.

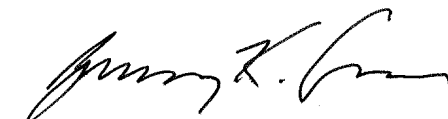
Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Douglas in view of Chelak. Claim 9 depends upon Claim 1, which, for the reasons above, is patentable over Douglas. Claim 9 is, therefore, in condition for allowance.

Claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Christine in view of Chelak. Applicant's Claim 19 is dependent upon Applicant's Claim 11, which, for the reasons above, is patentable over Christine. Claim 19, therefore, is in condition for allowance.

### **CONCLUSION**

In view of the amendments submitted herein and the above comments, it is believed that all grounds of rejection are overcome and that the application has now been placed in full condition for allowance. Accordingly, Applicant earnestly solicits early and favorable action. Should there be any further questions or reservations, the Examiner is urged to telephone Applicant's undersigned attorney at (770) 984-2300.

Respectfully submitted,



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Bradley K. Groff  
Reg. No. 39,695

Customer No. 23506  
GARDNER GROFF GREENWALD & VILLANUEVA, PC  
Tel: (770) 984-2300  
Fax: (770) 984-0098